IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

NO. [illegible]

PAUL GINSBURG, Petitioner,

v.

AMERICAN BAR ASSOCIATION, an Unincorporated Association, JOSEPH D. STECHER, GEORGE B. CHRISTENSEN, THOMAS A. REYNOLDS, JAMES D. HEAD, and WINSTON, STRAWN, SMITH & PATTERSON, a Partnership, Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND APPENDIX.

PAUL GINSBURG
Counsel for Petitioner

Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

SMITH BROS. CO. INC. LAW PRINTERS 418-426 BLVD. OF ALLIES PITTSBURGH 19, PA.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Paul Ginsburg, respectfully prays that a writ of certiorari issue in the above captioned case directed to the United States Court of Appeals for the Seventh Circuit to review its judgment at No. 12914, dated and entered May 6, 1960 (App. 3); and on the Petition for Rehearing therein, the Order denying same, unaccompanied by an Opinion, being dated and entered May 31, 1960.

OPINIONS BELOW

In the United States District Court for the Northern District of Illinois, Eastern Division, District Judge Walter J. LaBuy failed to deliver any Opinions, and that Court's Orders are not reported. The Opinion of the United States Court of Appeals for the Seventh Circuit is reported in 277 F.2d 801, and is appended hereto (App. 1).

JURISDICTION

The judgment sought to be reviewed (App. 3) was dated and entered May 6, 1960. The Order of the Court of Appeals denying the timely Petition for Rehearing was dated and entered May 31, 1960. Therefore, this petition for writ of certiorari may be filed on or before August 29, 1960.

The jurisdiction of this Honorable Court is invoked under 28 U. S. C., section 1254 (1); and the general supervisory power of this Court over lower Federal Courts.

QUESTIONS PRESENTED

1. Whether a Complaint alleging a continuing conspiracy to date and claiming damages as a result thereof from the defendants by reason of damages and injuries to the plaintiff, is (a) sufficient; (b) free from the defense of the Statute of Limitations on a Motion to Dismiss; (c) amendable once as a matter of right, without leave of Court or consent of the defendants, under F. R. C. P. Rule 15 (a), after service of a Motion to Dismiss but prior to service of a responsive pleading; (d) free from Orders of Court upon *ex parte* motions, without proper or adequate Notice to plaintiff, depriving

plaintiff of his right to a day in Court and his right to be heard in advance of judgment; and (e) whether proper service under the applicable Rules by the U. S. Marshal of the Summons and such Complaint as amended is valid.

2. Whether Orders of Court granting a Motion to Dismiss such a Complaint (as amended) for being (a) insufficient; (b) subject to the defense of the Statute of Limitations on motion; (c) not amendable under F. R. C. P. Rule 15 (a); and whether Orders of Court upon *ex parte* motions, without proper and adequate Notice to plaintiff, depriving plaintiff of his right to a day in Court and his right to be heard in advance of judgment, as well as quashing the U. S. Marshal's return of valid service of Summons properly made; enter a conflict with decisions on the same matters of the instant and other Courts of Appeals and with applicable decisions of this Court.

3. Whether the Court of Appeals, in affirming such Orders of Court appealed from, has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the District Court as to call for an exercise of this Court's power of supervision.

STATEMENT OF THE CASE

On April 30, 1959, the action was commenced by filing of a Complaint in the United States District Court for the Northern District of Illinois, Eastern Division, with jurisdiction based upon diversity of citizenship and an amount in excess of $1,000,000.00, exclusive of interest and costs. Your petitioner as plaintiff named as defendants in the Complaint respondents American Bar Association, George B. Christensen, Thomas A. Reyn-

olds, James D. Head, and others. By the Amendment to the Complaint filed on November 25, 1959, the others were dropped as defendants and respondents Joseph D. Stecher and Winston, Strawn, Smith & Patterson were added as defendants.

In the Complaint it was alleged, *inter alia*, that plaintiff is a member in good standing of defendant American Bar Association, and has been continuously since 1941; that the individual defendants are members of the American Bar Association; that plaintiff is a practicing lawyer, having his office for the practice of law in Pittsburgh, Allegheny County, Pennsylvania, and he is a member in good standing of State and Federal Courts in Pennsylvania and the Supreme Court of the United States; that he is a member in good standing of the Pennsylvania Bar Association and is a member in good standing and past officer of The Allegheny County Bar Association; that in addition to being a practicing lawyer of repute and good standing, he has at all times been a law abiding citizen and has enjoyed a high and excellent reputation in the profession and in his business, social and community relationships; and at no time has he committed any crime or been guilty of unprofessional conduct.

In the Complaint it was further alleged, *inter alia*, that the defendants themselves and through their attorneys, agents and employees, did unlawfully, maliciously and knowingly combine, confederate and agree together and with other persons being members of the bar of the Commonwealth of Pennsylvania, corruptly, conspiratorially, and illegally to destroy the professional standing, integrity, reputation and relationship of plaintiff with and among members of the Bench, Bar and Public

so as to deprive him of his livelihood and property right to practice his profession and otherwise to damage and destroy his credit, good name, fame and property; and they did so in the furtherance of a continuing conspiracy theretofore existing, and thereby advancing and furthering the said conspiracy; and that the said combination and conspiratorial agreement of defendants has been in effect continuously from its inception in 1953 or 1954 to the present time. Also, at the times referred to in the Complaint the defendants knew, or could have ascertained with the exercise of reasonable care, that the plaintiff both personally and professionally had important interests in matters involving millions of dollars, and that their unlawful actions, as aforesaid, could and would destroy said interests, as they did; and that by reason thereof the plaintiff has been injured and damaged in his good name, fame, property, reputation and profession, and has been deprived of valuable contracts, engagements and income amounting to millions of dollars. A jury trial was demanded.

On May 26, 1959, more than 20 days after commencement of the action, plaintiff's Notice of Taking Depositions was filed, pursuant to the Federal Rules of Civil Procedure and particularly Rule 26(a). After service thereof by the United States Marshal, a Motion for Protective Order under Rule 30 on behalf of defendant George B. Christensen, *pro se*, was filed on June 15, 1959, without adequate or proper notice to plaintiff, in order to hinder, obstruct and unduly delay the taking of depositions. The same day, June 15, 1959, Plaintiff's Answer to Motion for Protective Order under Rule 30 and Cross Motion was filed for submission to the Court, showing that the Motion under Rule 30 should be stricken and

dismissed or denied and dismissed because it was not served in accordance with the applicable Rules; failed to comply with Rule 30; was replete with scandal, impertinence, impropriety; and disregarded propriety of pleading, lacked good faith and was dilatory. Although the action was originally assigned to Judge Robson, an Order was entered on June 1, 1959, reassigning the cause to Judge Walter J. LaBuy who, on said June 15, 1959, entered an Order granting the Motion under Rule 30 that plaintiff take no depositions until further Order of Court.

Motions to Dismiss the Complaint and brief in support were filed by defendant George B. Chistensen, *pro se*, on June 22, 1959, and on July 1, 1959, by defendants Thomas A. Reynolds and James D. Head. Plaintiff's Answer to Motion to dismiss of Defendants, George B. Christensen, Thomas A. Reynolds and James D. Head was filed on November 24, 1959, authoritatively showing *inter alia*, that the Complaint fully complied with F. R. C. P. Rule 8 (a), Notice Pleadings; that the Complaint admittedly states a claim upon which relief can be granted; and that there was no bar of Statute of Limitations which defense, at any rate, was waived pursuant to Rule 12 (h) because it was not pleaded under Rule 8 (c).

On August 31, 1959, a Motion to Dismiss was filed on behalf of defendant, American Bar Association, and its memorandum in support thereof was filed on September 4, 1959. On October 5, 1959, Plaintiff's Answer to Motion to Dismiss of Defendant, American Bar Association, was filed authoritatively showing, *inter alia*, that said defendant was legally served and subject to the Court's jurisdiction and had submitted to the Court's jurisdiction;

that the Complaint is sufficient, and admittedly so; and that there was no bar of the Statute of Limitations which defense at any rate was waived pursuant to Rule 12 (h) because it was not pleaded under Rule 8(c).

On October 6, 1959, American Bar Association's Motion for submission of its Motion to Dismiss without oral argument was filed. On November 23, 1959, Plaintiff's Answer to the American Bar Association's Motion for Submission Without Oral Argument and Request for Oral Argument was filed, showing, *inter alia*, that said defendant's Motion erroneously presumes no opposition to its Motion to Dismiss; that plaintiff's answer supported the point that the Motion to Dismiss should be denied; and that plaintiff requested his right to oral argument.

On October 5,1959, an Order had been entered by Judge LaBuy placing the cause on the passed case calendar call for December, 1959. Nevertheless, on November 30, 1959, without any notice whatever and in disregard of said Order, Judge LaBuy entered an Order that the Motions to Dismiss the Complaint be sustained and the Complaint be dismissed for failure to state a claim upon which relief can be granted. By that Order, Judge LaBuy necessarily overlooked or misapprehended the record fact that on November 25, 1959, plaintiff's Amendment to the Complaint had been filed.

On December 8, 1959, plaintiff's Motion for Reconsideration and Oral Argument was filed for submission, praying that said Order of November 30, 1959, be vacated and the case set for oral argument on the motions and answers thereto, and, upon reconsideration, defendants' motions to dismiss the Complaint be denied; show-

ing, *inter alia*, that the cause had been set for December, 1959; that the Court did not have the entire record before it; that the Court considered only the defendant's briefs and had it considered also the plaintiff's Answers, it would have denied defendants' motions pursuant to the Rules and applicable law; that plaintiff's then undisposed of Amendment to the Complaint previously filed was absolutely allowed under Rule 15.(a) without leave of Court or consent of defendants prior to service of a responsive pleading; and that defendants Winston, Strawn, Smith & Patterson and Joseph D. Stecher had not yet pleaded to the Complaint as amended.

On December 8, 1959, defendant Joseph D. Stecher's Motion to Dismiss was filed, and an Order entered the same day granting the Motion, which was not legally or properly noticed, the notice of presentation being received by Plaintiff, at Pittsburgh on the day the Motion was being presented for defendant in Chicago. The same violative Notice of defendant Winston, Strawn, Smith & Patterson's Motion to Quash Service of Summons was received by plaintiff of said motion filed and granted on December 21, 1959.

On December 23, 1959, Judge LaBuy entered an Order denying plaintiff's motion for Reconsideration and Oral Argument, which insupportable and untenable Order, like every other erroneous decision entered throughout the proceedings by Judge LaBuy, was made without permitting the plaintiff his right to appear and to argue orally.

On December 28, 1959, plaintiff's Notice of Appeal was filed and on December 29, 1959, his Bond for Costs on Appeal was filed. The appeal was from the Order of

Court entered November 30, 1959, sustaining defendants' Motions to Dismiss; the Order of Court entered December 8, 1959, granting defendant Joseph D. Stecher's Motion to Dismiss; the Order of Court entered December 21, 1959, granting defendant Winston, Strawn, Smith & Patterson's Motion to Quash Service of Summons; and the Order of Court entered December 23, 1959, denying plaintiff's Motion for Reconsideration and Oral Argument.

On appeal, the Court of Appeals affirmed, delivering an "opinion" that hardly sketched the facts and failed to discuss the contested issues or the propositions of law relied upon authoritatively. The Court of Appeals was simply "satisfied that this appeal raises no substantial question for consideration by this Court and that it is wholly lacking in merit." This petition for writ of certiorari seeks a review of that judgment.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

I. The Judgment Sought to Be Reviewed Conflicts With Decisions on the Same Matters of the Instant and Other Courts of Appeals and With Applicable Decisions of This Honorable Court.

The conflicts involved herein are on issues of:

sufficiency of the Complaint,

the right to discovery,

no defense of the Statute of Limitations,

the right to amend under F.R.C.P. Rule 15(a),

jurisdiction over an unincorporated association,

the validity of service by the U. S. Marshal within his District, and

the right to a day in Court and to be heard in advance of judgment.

A. The Complaint is sufficient on its face. *Central Ice Cream Co. v. Golden Rod Ice Cream Co.*, 257 F. 2d 417, 418, 7th Cir.; *Conley v. Gibson*, 355 U.S. 41, 45-46; *Leimer v. State Mut. Life Assur. Co.*, 108 F. 2d 302, 304-6, 8th Cir.; *Dioguardi v. Durning*, 139 F. 2d 774, 775, 2nd Cir.; *Continental Collieries v. Shober*, 130 F. 2d 631, 635, 3rd Cir.; *Publicity Building Realty Corp. v. Hannegan*, 139 F. 2d 583, 586-7, 8th Cir.

The decision of the Court of Appeals for the Seventh Circuit in the instant case is the subject of a direct intra-circuit conflict with its decision in the case of *Central Ice Cream Co. v. Golden Rod Ice Cream Co., supra,* wherein that Court cited *Conley v. Gibson*, 355 U.S. 41, the Opinion by Mr. Justice Black (45-6) stating:

> "In appraising the sufficiency of the Complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Citing *Leimer v. State Mut. Life Assur. Co.*, 108 F. 2d 302, *Dioguardi v. Durning*, 139 F. 2d 774, and *Continental Collieries v. Shober*, 130 F. 2d 631.

In the *Leimer* case, which was remanded with directions to reinstate the plaintiff's amended Complaint and for further proceedings, the Court (p. 306) stated: "No matter how improbable it may be that she can prove her claim, she is entitled to an opportunity to make

the attempt, and is not required to accept as final a determination of her rights based upon inferences drawn in favor of the defendant from her amended Complaint. It will not do to circumvent a determination of a suit upon the merits by accepting an assertion that the claim stated in the Complaint is groundless. 'Lawsuits also often prove to have been groundless; but no way has been discovered of relieving a defendant from the necessity of a trial to establish the fact.' *Myers v. Bethlehem Corporation,* 303 U. S. 41."

In the *Dioguardi* case, the Court (775) stated: "It would seem however, that he has stated enough to withstand a mere formal motion, directed only to the face of the Complaint, and that here is another instance of judicial haste which in the long run makes waste. Under the new rules of civil procedure, there is no pleading requirement of stating 'facts sufficient to constitute a cause of action,' but only that there be 'a short and plain statement of the claim showing that the pleader is entitled to relief,' Federal Rules of Civil Procedure, rule 8(a), 28 U.S.C.A. following Section 723c; and the motion for dismissal under Rule 12(b) is for failure to state "a claim upon which relief can be granted."

In the *Continental Collieries* case, the Court (635) stated: "Under Rule 8(a) (2) of the Federal Rules a plaintiff 'sets forth a claim for relief' when he makes 'a short and plain statement of the claim showing that the pleader is entitled to relief.' See *Sierocinski v. E. I. Du Pont de Nemours Co.*, 3 Cir., 103 F. 2d 843. Technicalities are no longer of their former importance, and a short statement which fairly gives notice of the nature of the claim is a sufficient compliance with the requirements of the rules."

For further support on this proposition see *Nagler v. Admiral Corporation*, 248 F. 2d 319, 323-4, 2nd Cir., citing *U. S. v. Employing Plasters Ass'n of Chicago*, 347 U. S. 186, wherein the Supreme Court reversed the dismissal of a Complaint.

It is elementary that on a Motion to Dismiss, all allegations of the Complaint must be taken as admitted to be true and all inferences therefrom must be construed most favorably towards the plaintiff's case.

It is patent on the record that the Complaint fully complies with Federal Rule 8(a) *Claims for Relief*, which provides that "A pleading which sets forth a claim for relief . . . shall contain (1) a short and plain statement of the grounds upon which the Court's jurisdiction depends, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled." Rule 8(a) (1) is complied with in paragraph 1 of the Complaint, as amended; Rule 8(a) (2) is complied with in paragraphs 4-14 of the Complaint, as amended; and Rule 8(a) (3) is complied with in the conclusion of the Complaint, as amended.

In the face of the above record, pursuant to Notice Pleadings, how can anyone learned in the law sincerely deny that the Complaint is sufficient? Furthermore, District Court Judges are bound by the Federal Rules of Civil Procedure as by an Act of Congress. *Foltz v. Moore-McCormack Lines, Inc.*, 19 F. R. D. 301, 1956 (Cf. 28 U. S. C., sec. 2072)

B. District Judge LaBuy's refusal to permit plaintiff his right to take depositions was a deprivation of the right to discovery as guaranteed by Rule 26(a) and

applicable decisions thereunder. Procedurally, Judge LaBuy's consideration of defendants' motions to dismiss the Complaint prior to discovery was premature, as he thus would necessarily be incapable of giving plaintiff's Complaint full consideration.

C. An affirmative defense, such as the Statute of Limitations, not pleaded under Rule 8(c) is waived pursuant to Rule 12(h), and is not allowable subsequently by amendment. *Van Sant v. American Express Co.*, 169 F. 2d 355, 372, 3rd Cir. Consequently the defendants waived that defense, assuming *arguendo* they had it. Nevertheless they could not have availed themselves of that defense on a motion to dismiss the Complaint alleging a continuing conspiracy to date as they tried to do, because such a motion admits the allegations of the Complaint to be true.

D. A motion to dismiss is not a responsive pleading; and the plaintiff may amend his Complaint under Rule 15(a) once as a matter of course at any time prior to service of a responsive pleading, without leave of Court or consent of defendant. *Kelly v. Delaware River Land Commission*, 3rd Cir., 187 F. 2d 93, 94, certiorari denied 342 U.S. 812; *Ohio Cas. Ins. Co. v. Farmers Bank of Clay, Ky.*, 178 F. 2d 570, 573; 6th Cir.; *Whittemore v. Continental Mills*, 98 F. Supp. 387, 389; *Picking v. Pa. R. Co.*, D. C. Pa., 5 F.R.D. 280, 281. Thus it is evident as a matter of law that the affirmance of District Judge LaBuy's Orders of Court striking service of Summons for Winston, Strawn, Smith & Patterson; and striking and dismissing the Complaint as amended for Joseph D. Stecher, is quite insupportable and in conflict with decisions in other circuits on the same matter and with applicable decisions of this Court.

E. The District Court had jurisdiction over the American Bar Association and the subject matter of this litigation. Service of the Summons and Complaint upon the American Bar Association by the U. S. Marshal pursuant to Rule 4(d) was effective. *When the service of process was made, the Court's jurisdiction attached. When the Appearance in Court was entered, any objection to venue was waived.*

The most recent pronouncement on this issue is made in the case of *John A. Pavlovscak, appellee, v. John L. Lewis, et al., as Trustees of the United Mine Workers of America Welfare and Retirement Fund, Appellants,* 274 F. 2d 523 (3rd Cir.), affirming 168 F. Supp. 839, certiorari denied on May 23, 1960, at No. 857 October Term, 1959. In the District Court the defendants moved to dismiss the Complaint for lack of jurisdiction and improper venue and to quash process. It was held that the Fund is an unincorporated association and process served on the person in charge of the place where the association carried on activities would not be quashed. It appeared there, as here, that the defendant maintained in its own name an area office, bank accounts, listing in the telephone directory, and was doing business. For purposes of suability and amenability to process, such association is treated as an ordinary unincorporated association and also like a corporate or other entity. Therein it was held that the service satisfied the procedural requirements of Rule 4 (d) (7). In affirming, the Court of Appeals (p. 526) held, "The Supreme Court has accepted much less substantial local activity than we have here in furtherance of an out-of-state enterprise as sufficient to make it reasonable for the state to subject the entrepreneur to the jurisdic-

tion of its Courts. *McGee v. International Life Ins. Co.*, 1957, 355 U.S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223; *International Shoe Co. v. State of Washington*, 1945, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95." In denying rehearing, the Court of Appeals (p. 527) held it is now established that said enterprise is suable in Pennsylvania as a foreign "corporation or similar entity."

F. Service of the Summons and the Complaint (as amended) was made on all of the respondents in the Northern District of Illinois, Eastern Division, by the U. S. Marshal for that District. Accordingly, there cannot be any issue of validity of the service. It necessarily follows that District Judge LaBuy's Order quashing the service of Summons on Winston, Strawn, Smith & Patterson was clearly erroneous.

G. It is elementary that every litigant in the United States Courts is entitled to his right to a day in Court and to be heard in advance of judgment. Such fundamental rights are guaranteed by the due process of law clause of the Fifth Amendment to the U. S. Constitution. Nonetheless the Court of Appeals sanctioned District Court Judge LaBuy's deprivations of those rights.

These respondents never complied with Rule 6(a), (d) and (e) of the Rules of Civil Procedure in serving their "notices" and motions by mail, with the result that your petitioner could not be present at any presentations before District Judge LaBuy, who not only sanctioned their unruly violations of the Rules but also himself violated his Order placing the case on the calendar "for December 1959 term" by entering an Order on

November 30, 1959 (without notice), dismissing the Complaint.

At this point this Honorable Court should be informed of the astounding fact that when District Court Judge LaBuy entered his Orders of Court appealed from, he had before him only the Motions and briefs filed on behalf of the defendants. **The authoritative Answers in opposition thereto filed on behalf of your petitioner remained hidden from his view as they reposed in the files of the Clerk's Office. It would be interesting to speculate who is to blame for this departure from the accepted and usual course of judicial proceedings.**

Incredible as it may seem, your petitioner was never permitted to appear before United States District Judge Walter J. LaBuy to argue in opposition to the respondents' motions or in support of his own.

II. The Court of Appeals Has So Far Departed From the Accepted and Usual Course of Judicial Proceedings and So Far Sanctioned Such a Departure by the District Court as to Call for an Exercise of This Court's Power of Supervision.

The judicial and professional misconduct, obvious in this record, are the subject of a National scandal. It has been authoritatively shown herein that the attorneys for the American Bar Association have repeatedly violated the Association's own Canons of Professional Ethics and that they have successfully advocated violations of the Canons of Judicial Ethics by the jurists involved.

In rendering the decision and decrees below, the Judges did not fully comply with the Canons of Judicial

Ethics. There is a grave doubt about violations of Canon 1, Relations of the Judiciary; Canon 2, The Public Interest; Canon 3, Constitutional Obligations; Canon 5, Essential Conduct; Canon 6, Industry; Canon 14, Independence; Canon 19, Judicial Opinions; Canon 20, Influence of Decisions upon the Development of the Law; Canon 22, Review; and Canon 34, A Summary of Judicial Obligation.

No wonder that the Honorable, Earl Warren, Chief Justice of the United States, resigned from membership in the American Bar Association; and the Honorable, Tom C. Clark, Associate Justice of the Supreme Court of the United States, as Chairman of the Association's Section of Judicial Administration about two years ago stated, "Every lawyer has a common concern about breakdown in the administration of justice. The Section of Judicial Administration, A.B.A., offers an opportunity to do something about these problems".

Pursuant to the Canons of Judicial Ethics, Court Opinions, to be above suspicion, should include a full discussion of the facts and issues, the points and authorities in support. It is respectfully submitted that the Per Curiam Opinion of the Court of Appeals does not meet these important standards. It simply indicates that, "We have carefully reviewed these asserted grounds for reversal", without asserting what the grounds are and without discussing the authorities submitted by appellant in support of those grounds. A disclosure of the grounds and authorities would reveal that the rulings and orders appealed from should be reversed and that the affirmance conflicts with the Law of the Land. Accordingly, said opinion is actually scandalous

as to the plaintiff-appellant because from a reading of it nobody would know the truth about the litigation.

Should the American Bar Association not govern by example? Instead of resorting to sharp practices, as it has done in the instant case, should the American Bar Association not bend over backwards to live up to its own canons? It is respectfully submitted that the bad example set herein by the American Bar Association could cause a complete loss of confidence in the Bench and Bar of the United States of America.

A review by this Honorable Court of the judgment sought to be reviewed, will result in a legal adjudication that your petitioner may proceed against the respondents with his right to discovery. Then it will be developed that the American Bar Association has gone too far in its zeal to protect other respondents who, through a fraud upon the Kentucky Court, cheated the Estate of Sallie A. Hert, Deceased, out of millions of dollars, and in the course thereof damaged your petitioner to the extent of millions of dollars; and then repeatedly injured your petitioner subsequently in important property and other rights which money cannot buy.

CONCLUSION

A meticulous regard for the honor of the fair administration of justice in the Federal System requires that this petition for writ of certiorari be granted.

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner
Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania.

APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1959—APRIL SESSION, 1960

No. 12914
PAUL GINSBURG, *Plaintiff-Appellant*,
v.
AMERICAN BAR ASSOCIATION, an Unincorporated Association, JOSEPH D. STECHER, GEORGE B. CHRISTENSEN, THOMAS A. REYNOLDS, JAMES D. HEAD, and WINSTON, STRAWN, SMITH & PATTERSON, a Partnership, *Defendants-Appellees*.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

May 6, 1960

Before HASTINGS, *Chief Judge*, DUFFY and CASTLE, *Circuit Judges*.

PER CURIAM. This action was instituted in the district court by plaintiff-appellant, Paul Ginsburg, a practicing lawyer of Pittsburgh, Pennsylvania. Plaintiff seeks to recover damages in excess of $1,000,000 charged to have resulted from an alleged combination and conspiracy among the defendants to destroy his good name and professional standing.

Following an amendment to the complaint, we find the defendants to be the American Bar Association, a voluntary unincorporated association with its principal office in Chicago, Illinois; Joseph D. Stecher, the execu-

tive director of the American Bar Association; George B. Christensen, Thomas A. Reynolds and James D. Head, three Illinois lawyers; and the partnership of Winston, Strawn, Smith & Patterson, a Chicago law firm.

The district court sustained a motion to quash the service of summons upon defendant partnership, Winston, Strawn, Smith & Patterson, and granted various motions by all other defendants to dismiss the complaint. Plaintiff's motion for reconsideration was denied. This appeal followed.

Shortly after original complaint was filed, plaintiff served Notice of Taking Depositions. Defendant George B. Christensen, *pro se,* filed a Motion for Protective Order under Rule 30, Federal Rules of Civil Procedure, 28 U.S.C.A., setting out therein a statement of ten years of unsuccessful litigation in various courts on the part of plaintiff against certain of the instant defendants and others. The protective order was granted.

Plaintiff charges numerous errors relating to the various rulings and orders of the trial court leading up to and culminating in the dismissal of the action. We have carefully reviewed these asserted grounds for reversal.

After plaintiff's brief was filed in this appeal, certain of the defendants-appellees filed their motion for affirmance of the various rulings and orders appealed from in this cause, or in the alternative, to dismiss this appeal. Plaintiff answered this motion, and we ordered that the motion be continued and taken with the case on the merits.

We have given full consideration to the record, the motion for affirmance, and the briefs and oral argument

and have fully considered all of the issues raised therein. We are satisfied that this appeal raises no substantial question for consideration by this court and that it is wholly lacking in merit. We are of the opinion that the proper procedure in this case is to affirm the orders of the district court appealed from herein. See, *Waddell v. Chicago Land Clearance Commission,* 7 Cir., 206 F. 2d 748 (1953); *Securities and Exchange Com'n v. Vacuum Can Co.,* 7 Cir., 157 F. 2d 530 (1946); *Dakin v. United States,* 4 Cir., 105 F. 2d 150 (1939); *Brown v Carver,* 2 Cir., 45 F. 2d 673 (1930); *Robertson v. Wilkinson,* 5 Cir. 10 F. 2d 311 (1925).

The rulings and orders appealed from are

AFFIRMED.

COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1960.

No. 291

PAUL GINSBURG,

Petitioner,

vs.

AMERICAN BAR ASSOCIATION, AN UNINCORPORATED ASSOCIATION, JOSEPH D. STECHER, GEORGE B. CHRISTENSEN, THOMAS A. REYNOLDS, JAMES D. HEAD AND WINSTON, STRAWN, SMITH & PATTERSON, A PARTNERSHIP,

Respondents.

ANSWER OF GEORGE B. CHRISTENSEN, THOMAS A. REYNOLDS, JAMES D. HEAD AND WINSTON, STRAWN, SMITH & PATTERSON, A PARTNERSHIP, TO PETITION FOR CERTIORARI AND APPENDIX.

GEORGE B. CHRISTENSEN,
Pro se and as Attorney for Other Respondents,

THOMAS A. REYNOLDS,
Pro se and as Attorney for Other Respondents,

R. LAWRENCE STORMS,
Attorney for Respondents,

WINSTON, STRAWN, SMITH & PATTERSON,
38 South Dearborn Street,
Chicago, Illinois,
Of Counsel.

THE BLAKELY-BARREN PRINTING COMPANY, CHICAGO

IN THE

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To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Respondents suggest that the petition shows no proper ground for issuance of a writ of certiorari.

As to the merits: the asserted cause of action supposedly was a charge of conspiracy against the American Bar Asso-

ciation, its Secretary, and these respondents; however, the complaint, in either its original or supposedly amended form, contains no such allegation of fact or of an overt act by which one can tell what the asserted conspiracy was and what allegedly was done thereunder. It plainly is insufficient under either Illinois law (*Aaron* v. *Dausch*, 313 Ill. App. 524, 533, 40 N. E. 2d 805; *Doose* v. *Doose*, 300 Ill. 134, 139, 133 N. E. 49), or general federal law (*National Gas Appliance Corporation* v. *A. B. Electrolux*, 7 Cir., 270 F. 2d 472, 476).

As to asserted procedural points: petitioner is a Pittsburgh lawyer who has undertaken to proceed *pro se* in the District Court for the Northern District of Illinois. Service of notices of motions and pleadings by his opponents perforce have been by mail to him at Pittsburgh and all in accordance with rules of procedure. The "information" conveyed to this Court by the petition to the effect that when the District Court entered the sundry orders appealed from it had before it only motions and briefs filed on behalf of defendants, is incorrect, for, in fact, Mr. Ginsburg filed papers in opposition to the motions and diligently plied Judge LaBuy with letters and telegrams asserting his position. As is evident from the tenor of the petition (and from the records of this Court referred to in the annexed appendix), petitioner is not reticent in expressing his views.

With respect to the protective order under Rule 30 forbidding petitioner from conducting discovery without further order of court: such order was entered on a sworn petition the averments of fact of which have never been contradicted. Petitioner failed to include this petition in his appendix in the Court of Appeals and it seems not to be in the record certified to this Court. Accordingly, it is reprinted as an appendix to this Answer. It discloses the numerous proceedings, all without merit, by which peti-

tioner has harassed respondents and other lawyers (and Federal Judges) in the federal courts in Chicago and in this Court over a period of years and amply shows why the District Court did not abuse its discretion in keeping control of discovery.

As to service of summons and amended complaint upon the partnership respondent: the amended complaint was stricken and the action dismissed two days before the purported service was made. There was therefore no case pending and the Marshal was without authority to make service; the purported service was necessarily a nullity.

Although none of petitioner's points are valid, even if they possessed a semblance of merit they are not of the type that warrants certiorari.

Respectfully submitted,

GEORGE B. CHRISTENSEN,
Pro se and as Attorney for Other Respondents,

THOMAS A. REYNOLDS,
Pro se and as Attorney for Other Respondents,

R. LAWRENCE STORMS,
Attorney for Respondents.

WINSTON, STRAWN, SMITH & PATTERSON,
38 South Dearborn Street,
Chicago, Illinois,
Of Counsel.

APPENDIX.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois,
Eastern Division.

PAUL GINSBURG, *Plaintiff,* vs. AMERICAN BAR ASSOCIATION, etc., et al., *Defendants.*	Civil Action No. 59 C 696.

MOTION FOR PROTECTIVE ORDER UNDER RULE 30.

Now comes George B. Christensen, one of the defendants herein, *pro se,* and moves that an order be entered herein that the plaintiff not be permitted to take any depositions herein until further order of the Court, and in support of this motion shows:

1. Plaintiff herein, Paul Ginsburg, is a Pittsburgh lawyer who since 1950 has been bringing lawsuits of one kind or another against partners in the Chicago law firm of Winston, Strawn, Smith & Patterson, and predecessor partnerships, and who has also brought actions against Judges of this Court accusing them of improprieties in deciding plaintiff's cases against him and in favor of the Winston, Strawn, Smith & Patterson defendants. The in-

stant action, alleging a conspiracy between various Winston, Strawn, Smith & Patterson defendants, the American Bar Association, and "other [unidentified] persons being members of the Bar of the Commonwealth of Pennsylvania," to deprive plaintiff of his livelihood and to damage and destroy his credit, etc., is the third court action plaintiff has filed against the Winston, Strawn, Smith & Patterson defendants, although it is the first one he has filed, so far as is now known, against the American Bar Association. Defendant shows that the action on its face is barred by the statute of limitations, and will show upon appropriate pleading herein that the matter is *res adjudicata*.

2. Defendant's troubles with plaintiff stem from litigation that took place in the State of Kentucky in 1950 (*Robertson, et al.* v. *Hert's Adm's, et al.*, 312 Ky. 405, 227 S. W. 2d 899) in which the law firm of which defendant and others were members represented certain clients who originally had come from Chicago. Mr. Ginsburg sought to intervene in that litigation as an alleged *amicus curiae*. Most of the parties thereto resisted the proposed intervention and it was denied by the Kentucky court. The brief filed by defendant's firm in that Kentucky case argued that Ginsburg was an "interloper" seeking "to get himself into a position where he might hope to be bought off."

After the Kentucky decision Mr. Ginsburg instituted three separate libel suits against lawyers or parties who had opposed him and alleged that they had libeled him by their "interloper" argument. He lost all these libel suits: He unsuccessfully sued certain Kentucky lawyers and others in the District Court of the Western District of Kentucky and lost an appeal to the Court of Appeals for the Sixth Circuit (*Ginsburg* v. *Citizens Fidelity Bank, et al.*, 194 F. 2d 538). In Chicago he sued defendant (and others) in the District Court for the Northern District of Illinois; his complaint was stricken; he appealed to the Court of

Appeals for the Seventh Circuit, where he again lost. He then unsuccessfully sought certiorari from the Supreme Court (*Ginsburg* v. *Black, et al.*, 192 F. 2d 823, 343 U. S. 934). He filed a similar suit in Chicago against The First National Bank of Chicago and Alfred L. Kuehn, which had a history similar to that of the suit against defendant (and others) (*Ginsburg* v. *First National Bank, et al.*, 192 F. 2d 826, 343 U. S. 934).

After losing the aforesaid libel litigation, Mr. Ginsburg sought to have the American Bar Association discipline all then members of Winston, Strawn, Smith & Patterson (and the Kentucky lawyers whom he had sued unsuccessfully) for alleged misconduct in the Kentucky suit. They defended against the Bar Association proceeding. After full hearings, the Association refused to take action upon petitioner's charges.

After losing the American Bar Association disciplinary proceedings, Mr. Ginsburg, on May 12, 1954, filed a new suit against sundry Winston, Strawn, Smith & Patterson partners in the United States District Court for the Northern District of Illinois, in which he alleged in substance that the defendants had again libeled him by repeating essentially the same things in the Bar Association proceedings which Mr. Ginsburg had brought against them that had been said in the Kentucky proceedings. On July 1, 1955, the Honorable Philip L. Sullivan entered summary judgment in favor of the defendants and against Mr. Ginsburg in that action. Mr. Ginsburg prosecuted an appeal to the Seventh Court of Appeals, which affirmed Judge Sullivan (237 F. 2d 790). Ginsburg then filed a petition for a writ of certiorari, which was denied by the Supreme Court on March 25, 1957. A motion for rehearing with respect thereto was denied May 6, 1957 (353 U. S. 911, 951). On or about October 7, 1957, Mr. Ginsburg filed a further petition for rehearing of that action out of term

time in the Supreme Court. This was denied. On or about March 17, 1958, Mr. Ginsburg filed a further motion in the Supreme Court "For Leave to File Supplemental Record and Second Petition for Rehearing Out of Term Time; and, in the Alternative, Motion to Remand." This also was denied.

The sundry petitions in the Supreme Court all dwelt upon the fact that defendant's law firm and defendant personally had appeared in a certain criminal income tax case in which Judge Sullivan's brother is one of the defendants, and alleged in varying fashion that this disqualified Judge Sullivan from acting in the case in which he had entered summary judgment.

In addition to all of the foregoing, Mr. Ginsburg filed a petition for mandamus against Judge Sullivan in the Seventh Court of Appeals on October 6, 1955 (Cause No. 11588). That was denied.

About December 27, 1957, although Mr. Ginsburg's second case in this Court (No. 54 C 681) had long been decided and the Court had lost jurisdiction, Mr. Ginsburg presented a document to the Clerk of the Court captioned and entitled in said action and labeled as a "Motion to Vacate the Summary Judgment Order of July 1, 1955, and to Enter Order of Disqualification." On January 27, 1958, the Honorable Michael Igoe entered an order striking the aforesaid document.

Thereupon Mr. Ginsburg filed a petition for a writ of mandamus in the Seventh Court of Appeals directed to both Judges Sullivan and Igoe, seeking to review Judge Igoe's action. Such writ was denied.

On June 12, 1958, Mr. Ginsburg endeavored to file further motions in the same case in which Judge Igoe had acted, and the Honorable Roy Johnson, Clerk of this Court, refused to receive the same. Whereupon, Mr. Ginsburg

instituted another mandamus action in the Seventh Court of Appeals, this time against Judge Sullivan and Clerk Johnson. The Court of Appeals refused to issue the writ of mandamus, and from that refusal Mr. Ginsburg filed a petition for writ of certiorari to the United States Supreme Court (Cause 372, October Term, 1958, of the United States Supreme Court). The Supreme Court denied certiorari in that matter.

3. The instant action contains no allegations of fact whatsoever and was obviously prepared without the faintest investigation of the facts, because it accuses four men who have long been dead as being residents of the State of Illinois, members of the American Bar Association, and as being engaged in a conspiracy against Mr. Ginsburg, and lists others who have long been retired from the law firm of which this defendant is a member: Edward G. Ince resigned from the predecessor firm of Winston, Strawn, Smith & Patterson on January 1, 1952, and died August 17, 1955; George W. Ott died March 24, 1956; Walter A. Wade died June 23, 1955; Thomas I. Underwood died August 14, 1957; William C. Mulligan resigned from the predecessor law firm January 1, 1955, and moved to the State of New York on or about that date; Guy A. Gladson resigned from the predecessor firm February 1, 1955, and on or about that date moved to and became a resident of the State of Florida.

4. Defendant respectfully shows that the instant complaint herein is but another outbreak in a course of unfounded litigation, and on its face is devoid of merit because it alleges not one overt act of the asserted conspiracy. Plaintiff by his action of alleging to the Court that men long since dead and other men who have long since left the practice of law in Chicago are currently engaged in a conspiracy against him, has abused the processes of the Court.

5. Defendant shows that plaintiff Ginsburg has issued a notice calling for the taking of depositions of James D. Head, George B. Christensen, Thomas I. Underwood, and Thomas A. Reynolds, present or one time members of Winston, Strawn, Smith & Patterson, and Joseph D. Stecher, who is Executive Director of the American Bar Association, on June 15, 1959, at 10:00 o'clock A. M., Central Standard Time. Defendant shows that said taking of depositions would be but a further harassment of the defendants herein and prays that an order be entered forbidding plaintiff from taking any depositions in the within action until further order of the Court herein.

GEORGE B. CHRISTENSEN,
Defendant, appearing pro se.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

George B. Christensen, being first duly sworn, on oath deposes and says that the statements of fact in the foregoing motion signed by him are true.

GEORGE B. CHRISTENSEN.

Subscribed and sworn to before me this 10th day of June, 1959.

JANE NEIS,
Notary Public.

COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 291

PAUL GINSBURG,

Petitioner,

vs.

AMERICAN BAR ASSOCIATION, an Unincorporated Association, JOSEPH D. STECHER, et al.,

Respondents.

ANSWER OF AMERICAN BAR ASSOCIATION AND JOSEPH D. STECHER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FLOYD E. THOMPSON
SHELDON KARON
Attorneys for American Bar Association and Joseph D. Stecher

THOMPSON, RAYMOND, MAYER, JENNER & BLOOMSTEIN
135 S. LaSalle Street
Chicago 3, Illinois
RAndolph 6-0220
Of Counsel

UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL. LAkeview 5-6581

IN THE

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AMERICAN BAR ASSOCIATION, an Unincorporated Association, JOSEPH D. STECHER, et al.,

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ANSWER OF AMERICAN BAR ASSOCIATION AND JOSEPH D. STECHER TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The questions presented for decision in this case are whether the District Court had jurisdiction of the American Bar Association and whether the complaint filed by plaintiff states a claim on which relief can be granted as to the American Bar Association or Joseph D. Stecher, the Executive Director of the Association.

Plaintiff (petitioner) alleges in his complaint that the District Court has jurisdiction over his claim by reason of diversity of citizenship between plaintiff and the named defendants and the required jurisdictional amount. (Appendix to Brief for Plaintiff, p. 6.) The gist of plaintiff's complaint is that the named defendants combined and conspired with other persons who were members of the Bar of Pennsylvania to destroy the professional reputation of plaintiff and that by reason of this unlawful conspiracy among the defendants and others the plaintiff had been injured in his good name and reputation. (App. pp. 8-9, 25-26.) Defendant American Bar Association, an unincorporated association, moved to dismiss the complaint upon the ground (1) that the District Court has no jurisdiction of plaintiff's claim, (2) that the complaint does not state a claim upon which relief can be granted, and (3) that the claim is barred by the Illinois Statute of Limitations. (App. pp. 13-15.) Defendant Stecher moved to dismiss on the second and third grounds. (App. pp. 30-31.) The complaint was dismissed for failure to state a claim upon which relief can be granted. (App. pp. 27, 32.)

We ignore plaintiff's vituperations and his criticisms of the District Judge, of the Judges of the Court of Appeals and of defendants' attorneys as unworthy of reply.

REASONS FOR DENIAL OF THE PETITION.

The District Court Lacked Personal Jurisdiction Over the American Bar Association.

It appears from the complaint and the motion to dismiss that American Bar Association is an unincorporated association of members of the Bar of Pennsylvania, Illinois and other states. Under Rule 17(b) of the Federal Rules of Civil Procedure, it is clear that the law of the state in

which the District Court is held will determine the capacity of such an unincorporated association to be sued. The law of Illinois, therefore, is controlling upon this question. *Rushy* v. *Electric Utilities Union*, 323 U.S. 72, 74; *Pullman Standard Car Manufacturing Co.* v. *Local Union No. 2928*, (C.A. 7), 152 F. 2d 493, 494. In Illinois an unincorporated association cannot be made a defendant in an action at law. *Johnson* v. *Grand Lodge of Railroad Trainmen*, 16 Ill. App. 2d 186, 188, 147 N.E. 2d 707, 708; *Collins* v. *Barry*, 11 Ill. App. 2d 119, 131, 136 N.E. 2d 597, 602.

The Illinois rule forbidding suits against unincorporated associations in their common name makes plaintiff's service of process upon defendant, American Bar Association, ineffective under Rule 4(d)(3) of the Federal Rules of Civil Procedure, which authorizes service only upon an "unincorporated association which is subject to suit under a common name". Since American Bar Association is not subject to suit under a common name, service on the Association was unauthorized under this rule.

Contrary to plaintiff's contention, the voluntary appearance of American Bar Association did not result in the loss of its right to assert the original lack of personal jurisdiction over it of the District Court. *Blank* v. *Bitker*, (C.A. 7) 135 F. 2d 962; *Orange Theatre Corporation* v. *Rayherst Amusement Corporation*, (C.A. 3), 139 F. 2d 871, 874.

The lack of personal jurisdiction of the District Court over this defendant required that the action be dismissed. *Pullman Standard Car Manufacturing Co.* v. *Local Union No. 2928* (C.A. 7), 152 F. 2d 493, 495.

The District Court Lacked Jurisdiction Over the Subject Matter of Plaintiff's Complaint Against American Bar Association.

Plaintiff alleges that he is a citizen of the State of Pennsylvania and a member of American Bar Association and has been so since 1941. By reason of these allegations, plaintiff has shown that the District Court lacked jurisdiction over the subject matter of his claim in so far as it involves American Bar Association by reason of the absence of diversity of citizenship between the plaintiff and the defendant.

An unincorporated association has not been accorded the status of a legal entity for purposes of diversity jurisdiction, nor has there developed any assumption of a single citizenship of the members. In determining the citizenship of an unincorporated association for purposes of ascertaining diversity jurisdiction, the citizenship of all of the members must be looked to and not merely that of the officers or managers. *Chapman* v. *Barney*, 129 U.S. 677, 681; *Thomas* v. *Board of Trustees*, 195 U.S. 207, 210; *Hettenbaugh* v. *Airline Pilots Ass'n International*, (C.A. 5) 189 Fed. 2d 310, 320.

By pleading that he is both a citizen of the State of Pennsylvania and a member of the American Bar Association, plaintiff has disclosed on the face of his complaint the absence of diversity of citizenship between himself and this defendant, thereby leaving the District Court without jurisdiction over the subject matter of the action in so far as it is alleged to pertain to this defendant.

Dismissal of the action against the American Bar Association was required for this lack of jurisdiction of the subject matter.

The Complaint Fails to State a Claim Against Either American Bar Association or Joseph D. Stecher upon Which Relief Can Be Granted.

Plaintiff alleges that American Bar Association and Joseph D. Stecher, its Executive Director, combined and conspired with others to destroy the professional standing and reputation of plaintiff. There is not a single fact set forth in the complaint to support this charge, nor does plaintiff describe a single overt act on the part of either defendant or even vaguely describe the type of tortious conduct by these defendants to carry out this conspiracy to destroy plaintiff's reputation. In short, plaintiff has alleged no more than a conspiracy to commit an actionable wrong which is not, in itself, a cause of action. *North American Plywood Corporation* v. *Oshkosh Trunk & Luggage Company*, (C.A. 7) 263 Fed. 2d 543, 545; *Bonney* v. *King*, 201 Ill. 47, 50, 66 N.E. 377.

The Illinois courts have uniformly held that the gist of an action involving alleged conspiracy is not the conspiracy but the wrongful acts of the defendants done in pursuance of the conspiracy resulting in damage to the plaintiff. *Pastelniak* v. *Vilimas*, 352 Ill. 270, 277, 185 N.E. 611; *Seno* v. *Franke*, 16 Ill. App. 2d 39, 47, 147 N.E. 2d 469, 473.

Plaintiff's complaint fails to allege any facts whatsoever as to the wrongful acts these defendants allegedly have committed. There is no mention of the terms of the alleged conspiracy, the methods adopted to effectuate the ends of the conspiracy or the overt acts performed by any member of the conspiracy in pursuance of its goals. There is no allegation of fact that any officer, agent or employee of the American Bar Association or that Joseph D. Stecher participated in the commission of any wrongful act affecting plaintiff which resulted in damage to the plaintiff.

Professor Moore has stated well in his treatise, Moore's Federal Practice, §8.13, Vol. 2, p. 1653, that the complaint must allege facts sufficient to support a legal basis for relief. He says:

> "The pleading still must state a 'cause of action' in the sense that it must show 'that the pleader is entitled to relief'; it is not enough to indicate merely that the plaintiff has a grievance, but sufficient detail must be given so that the defendant, and the court, can obtain a fair idea of what the plaintiff is complaining, and can see that there is some legal basis for recovery."

It requires no citation to show that plaintiff's complaint violates both the letter and the spirit of Rule 8 of the Rules of Civil Procedure. The complaint fails entirely to inform these defendants and the Court of what the plaintiff is complaining.

The District Court properly entered judgment of dismissal of the complaint for its failure to state a claim on which relief can be granted, and the Court of Appeals properly affirmed the judgment of dismissal.

Plaintiff's Claim Is Barred by the Illinois Statute of Limitations.

To the extent that plaintiff might attempt to prove the injury or destruction of his personal reputation by defendants as a result of oral or written statements of a defamatory character made by them, it is barred by §13 of the Illinois Statute of Limitations, which provides:

> "Actions for slander or libel shall be commenced within one year next after the cause of action accrued." Ill. Stats. (1959) Ch. 83, Par. 14.

According to plaintiff's complaint this cause of action accrued no later than the year 1954, some five years before the complaint was filed, and, therefore, if this is an action for slander or libel, it is clearly barred. The right to raise this defense by motion to dismiss, contrary to plaintiff's contention, has been clearly established. *Anderson* v. *Linton*, (C.A. 7), 178 Fed. 2d 304, 309; *Albrecht* v. *Indiana Harbor Belt Railroad Co.*, (C.A. 7) 178 F. 2d 577, 578.

Conclusion.

For the reasons stated, the District Court properly dismissed the complaint of plaintiff in so far as it pertains to defendants, American Bar Association and Joseph D. Stecher, and the Court of Appeals properly affirmed this decision. The petition for further review by this court should be denied.

Respectfully submitted,

FLOYD E. THOMPSON
SHELDON KARON
Attorneys for American Bar Association and Joseph D. Stecher.

THOMPSON, RAYMOND, MAYER,
JENNER & BLOOMSTEIN
135 S. LaSalle St.
Chicago 3, Illinois
RAndolph 6-0220
Of Counsel.

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IN THE

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OCTOBER TERM, 1960

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PAUL GINSBURG, Petitioner,

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PETITIONER'S REPLY BRIEF

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PAUL GINSBURG,
Counsel for Petitioner

Carlton House
529 Grant Street
Pittsburgh 19, Pennsylvania

IN THE

Supreme Court of the United States

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AMERICAN BAR ASSOCIATION, an Unincorporated Association, JOSEPH D. STECHER, GEORGE B. CHRISTENSEN, THOMAS A. REYNOLDS, JAMES D. HEAD, and WINSTON, STRAWN, SMITH & PATTERSON, a Partnership, Respondents.

PETITIONER'S REPLY BRIEF

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The "answers" of the respondents herein could not comply with paragraph 1 of Rule 24 of this Court, and they fail to comply therewith because they do not disclose "any matter or ground why the cause should not be reviewed by this Court".

The "answer" of American Bar Association and Joseph D. Stecher will be referred to herein as "ABA Answer". The "answer" of George B. Christensen, Thomas A. Reynolds, James D. Head, and Winston, Strawn, Smith & Patterson will be referred to herein as "Winston Answer".

For reply to the statement on page 2 of the ABA Answer, "We ignore plaintiff's vituperations and his criticisms of the District Judge, of the Judges of the Court of Appeals, and of defendants' attorneys as unworthy of reply", it is respectfully submitted that said statement is just as untenable and insupportable as the "Reasons for the Denial of the Petition" at pages 2-7 therein. Respondents could not and did not quote a single vituperation. Undoubtedly respondents' problem lies in mistaking unpleasant facts for vituperations. So far as the criticisms of District Judge Walter J. La Buy, of the Judges of the Court of Appeals and of defendants' attorneys are concerned, an explanation by way of reply was indeed required, but respondents cannot justify or explain away said criticisms without getting in deeper or becoming more invclved, and so they substituted therefor a defensive brush-off which is analogous to a plea of *nolo contendere*.

In both the Winston Answer and the ABA Answer, respondents have misrepresented to this Honorable Court your petitioner's Complaint as well as the law applicable thereto. In the lower courts in Chicago they were so persuasive with that maneuver that District Judge La Buy readily accepted their misrepresentations as true, and favored them with a dismissal of the Com-

plaint without bothering to hear oral arguments or even to read your petitioner's Answers in opposition to their Motion to Dismiss (which never left the Clerk's Office prior to appeal). District Judge La Buy must have been positively convinced of the righteousness of his Bar-Chamber Decree, because he opined that it did not even require a supporting Opinion. The Judges of the Court of Appeals were far more democratic about the cause, as they declined to put their stamp of affirmance on that decree until after they had permitted your petitioner his right to go through an oral argument.

Now these respondents seek to have this Honorable Court dispense the same brand of La Buy "justice" by trying to persuade it to deny a review on certiorari. They are advocating that this Honorable Court should see to it that your petitioner receive the same treatment accorded the political prisoner in an Iron Curtain Country, who was assured by the Dictator that he would receive a fair trial, be convicted and hanged.

Conspicuous by absence from both the Winston Answer and the ABA Answer is any legal opposition whatever to the wealth of authorities cited by your petitioner in support of his Reasons Relied on for the Allowance of the Writ.

In the couple of pages comprising the Winston Answer there is no brief in opposition at all to the Petition. Although the ABA Answer is three times as long, it is quite as feeble. Accordingly, all of the respondents are simply notifying this Honorable Court what they want it to do, rather than what it should do. No wonder the respondents all resorted to "Answers" instead of the

customary and usual Brief in Opposition that is presented by experienced practitioners.

In the Winston Answer reference is made on pages 2-3 to the Motion for Protective Order Under Rule 30, lodged in the District Court by respondent George B. Christensen, *pro se*. Respondents' assertion that petitioner did not include same in the Appendix in the Court of Appeals is correct, but the reason is the fact that their document is scandalous and impertinent. It is likewise correct that it is not in the record certified to this Court. Since your petitioner has not been notified of a counter-designation of record herein, or that a certified copy thereof has been filed herein, it is respectfully submitted that said Motion for Protective Order Under Rule 30 is still not included in the record before this Court, even though respondents have printed what purports to be a copy of it as an "appendix" to their "answer".

The said respondents' printing of that document as an appendix is an outright violation of the practice in this Court, and gives justification to an argument by your petitioner that it was a tricky way of getting into print, for distribution from coast to coast, of a scandalous and impertinent document which is violative of the Canons of Professional Ethics of respondent American Bar Association.

It is denied by petitioner that the "averments of fact" contained therein "have never been contradicted". Furthermore, the answer thereto manifests how wholly without merit is the motion.

Your petitioner now is obliged to lodge with the Clerk of this Court for filing a certified copy of his An-

swer to Motion for Protective Order Under Rule 30 printed on pages 5-6 of his Reply Brief in the Court of Appeals, plus nine additional copies for the use of this Court, which accompany this Reply Brief; and further to reprint it herein, not as an appendix but as a reply, as follows:

"Now, comes Paul Ginsburg, the plaintiff herein, and makes Answer to the Motion for Protective Order Under Rule 30 of George B. Christensen, *one* of the defendants herein, *pro se*, moving "that an order be entered herein that the plaintiff not be permitted to take any depositions herein until further order of the Court", and moves that this Honorable Court enter an Order that this one defendant's said motion be stricken and dismissed or denied and dismissed; and avers:

"1. Notice of the said motion was not served in accordance with the Federal Rules of Civil Procedure pertaining to Notice.

"2. The defendant's motion fails to comply with Rule 30.

"3. The motion is replete with averments that are scandalous, impertinent, incompetent, and improper for insertion in a pleading under Rule 30, and are inserted for the express and obvious purpose of precluding a fair and impartial disposition of plaintiff's rights under his Complaint and the Notice of depositions filed in accordance with the Federal Rules of Civil Procedure.

"4. The scandalous matters inserted in the motion display a disregard for the Federal

> Rules of Civil Procedure and propriety of pleading, and they evidence a total lack of good faith towards this Honorable Court in the presentation of a scandalous and dilatory pleading.
>
> "WHEREFORE, plaintiff respectfully prays that this Honorable Court enter an Order that this one defendant's motion be stricken and dismissed or denied and dismissed."

That insupportable protective order was to protect the respondents from their liabilities imposed by law. Through it, the petitioner was denied his right to take depositions, prior to which the respendents had no right to a detailed complaint. Why did the respondents hasten to block discovery and to prevent a showdown on the facts? Would they not have welcomed full disclosure if they were innocent of the conspiracy as alleged in the Complaint? They impertinently referred to the "10 year background of the instant case" and the proceedings "instituted and lost by appellant," without confessing, of course, that all losses were on illegal technicalities. Their fear of full disclosure could certainly have been motivated by a realization that it would resurrect their fraud in procuring a Court Order in the Estate of Sallie A. Hert, Deceased, to sell to their (other) client 85% of the shares of stock of the American Creosoting Company and its subsidiaries, which fraud resulted in depriving beneficiaries of the Estate of millions of dollars and, in the course thereof, unnecessarily and unlawfully defaming your petitioner. *Regardless of its background, the instant case was less than one year old.*

Furthermore, one would expect respondent Christensen to conceal rather than boast of the various cases

involving the late Judge Sullivan of the District Court and the convictions of the Judge's brother, Harold E. Sullivan, Esquire.

With studied carelessness, respondent Christensen avoided any mention in his appendix of how he failed to persuade this Honorable Court to deny a review of the decision of the Court of Appeals which "sprung" Judge Sullivan's brother; and, after making the best argument of his career (October 17, 1957) this Honorable Court nevertheless reversed the Seventh Circuit and remanded the cause to the District Court, wherein the Judge's brother was also again indicted on additional counts. It is respectfully submitted that respondent Christensen and his partners in law indeed lost that cause on the merits. See *United States of America v. Shotwell Manufacturing Co., Harold E. Sullivan, et al.*, 355 U. S. 233.

CONCLUSION

Petitioner's Reasons Relied On for the Allowance of the Writ in his Petition are fully supported therein, establishing that the judgment sought to be reviewed conflicts with decisions on the same matters of the instant and other courts of appeals and with applicable decisions of this Court; and further that the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and so far sanctioned such a departure by the District Court as to call for an exercise of this Court's power of supervision.

The "answers" of the respondents do not contain any legal opposition to the petition; nor do they disclose

any matter or ground why the cause should not be reviewed by this Court.

The weaknesses of the Answers emphasize the strength of the Petition.

Therefore, the petition for writ of certiorari should be granted.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner
Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

Dated: 19 September 1960.

FILE COPY

Office-Supreme Court, U.S.
FILED
OCT 28 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

NO. 291

PAUL GINSBURG, Petitioner,

v.

AMERICAN BAR ASSOCIATION, an Unincorporated Association, JOSEPH D. STECHER, GEORGE B. CHRISTENSEN, THOMAS A. REYNOLDS, JAMES D. HEAD, and WINSTON, STRAWN, SMITH & PATTERSON, a Partnership, Respondents.

MOTION TO REMAND

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

PAUL GINSBURG
Counsel for Petitioner

Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

SMITH BROS. CO. INC., LAW PRINTERS, 434-436 BLVD. OF ALLIES, PITTSBURGH 19, PA.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

NO. 291

PAUL GINSBURG, Petitioner,

v.

AMERICAN BAR ASSOCIATION, an Unincorporated Association, JOSEPH D. STECHER, GEORGE B. CHRISTENSEN, THOMAS A. REYNOLDS, JAMES D. HEAD, and WINSTON, STRAWN, SMITH & PATTERSON, a Partnership, Respondents.

MOTION TO REMAND

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Paul Ginsburg, respectfully moves this Honorable Court to vacate its Order entered on October 10, 1960, denying his petition for writ of certiorari (*United States of America, Petitioner, v. The Ohio Power Company*, 353 U. S. 98, 1957); and then grant the petition for writ of certiorari and reverse the judg-

ment sought to be reviewed; and thereupon vacate the Orders of the Court of Appeals and reverse the Orders of the District Court, and remand (28 U. S. C., section 2106) the above entitled case to the District Court for further proceedings commencing with a Hearing on respondents' Motions to Dismiss the Complaint and petitioners' Answers thereto (*United States of America, Petitioner, v. Shotwell Manufacturing Company, et al.*, 355 U. S. 233, 1957, citing and relying upon *Communist Party v. Subversive Activities Control Board*, 351 U. S. 115, and *Mesarosh v. United States*, 352 U. S. 1); and in support hereof avers:

1. On October 10, 1960, upon consideration of the Petition for Writ of Certiorari, respondents' Answers thereto, and Petitioner's Reply Brief, this Honorable Court denied the petition.

2. It is apparent from the Record herein that the Orders of District Judge Walter J. La Buy were not accompanied by an Opinion; that the complete record was not before the District Judge when he acted upon the defendants' Motions to Dismiss the Complaint, because the plaintiff's Answers thereto remained in the files in the Office of the Clerk, resulting in *ex parte* consideration in chambers of the said motions; and that your plaintiff-petitioner was discriminatorily or arbirarily denied his right to a day in Court.

3. It is further apparent from the Record that although District Judge Walter J. La Buy on October 5, 1959, ordered that the cause be placed on the calendar call for December 1959 term (R. 18), the jurist nevertheless entered Orders (R. 27) prior thereto and without

any notice whatever on November 30, 1959, dismissing the Complaint.

4. Had the cause proceeded in the usual and accepted course pursuant to the said Order placing it on the calendar call for December 1959 term, your petitioner could have presented to the Court his Answers from the Clerk's files and legal argument thereon, thus showing that the Motions to Dismiss were untenable and insupportable with the result that they should be denied.

5. Obviously, your petitioner was denied his constitutional right to due process of law and particularly his right to be heard in advance of judgment.

6. A meticulous regard for the honor of the fair administration of justice in the Federal System requires that you petitioner be afforded his right to a day in Court.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner
Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

Dated: 26 October 1960.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

NO. 291

PAUL GINSBURG, Petitioner,

v.

AMERICAN BAR ASSOCIATION, an Unincorporated Association, JOSEPH D. STECHER, GEORGE B. CHRISTENSEN, THOMAS A. REYNOLDS, JAMES D. HEAD, and WINSTON, STRAWN, SMITH & PATTERSON, a Partnership, Respondents.

PETITION FOR REHEARING

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petition for rehearing of Paul Ginsburg, petitioner in the above entitled cause, respectfully represents:

1. On October 10, 1960, upon consideration of the Petition for Writ of Certiorari, respondents' Answers

thereto, and Petitioner's Reply Brief, this Honorable Court denied the petition.

2. On October 31, 1960, Mr. Justice Clark entered an Order extending the time for filing a Petition for Rehearing to and including December 5th, 1960, in order to allow time for this Court's disposition of your petitioner's Motion for Remand, the granting of which motion would obviate the need for presenting a Petition for Rehearing.

3. On November 28, 1960, no disposition of the Motion to Remand having been made, Mr. Justice Clark entered an Order further extending the time for filing this Petition for Rehearing to and including January 4th, 1961.

4. On December 5, 1960, this Honorable Court entered an Order denying the Motion to Remand.

5. This Honorable Court, through its said denial of petitioner's Motion to Remand, seems to have given its sanction to the affirmance of District Judge LaBuy's decrees discriminatorily or arbitrarily depriving your petitioner of his right to a day in Court and to be heard in advance of judgment, by (a) entering such decrees on an *ex parte* basis in chambers without consideration of the entire record, (b) rendering such decrees in advance of the date set for argument and formal presentation of the pleadings without Notice to your petitioner, and (c) failing, of course, to accompany such decrees with a supporting Opinion. *It is respectfully submitted that this Honorable Court would not sanction such reprehensible irregularities and illegalities, but nevertheless that is the interpretation repeatedly put upon such*

denials by members of the Bench and Bar as well as the public. This Honorable Court, therefore, should dispel such dangerous misconceptions through a rehearing of this cause. Otherwise, the result could be undue encouragement to the Judges of the Courts below to continue such unauthorized and unconstitutional practices, and to other United States Judges from coast to coast to indulge in them.

6. This Honorable Court, through its denial of certiorari herein, has exercised its discretion not to review judgments which (judgments) obviously enter conflicts with decisions of the instant and other Circuits as well as with applicable decisions of this Court, resulting in deprivations of the right to due process of law and other rights "guaranteed" by the Constitution of the United States. Accordingly, nobody learned in the law would make the asseveration that such an exercise of discretion is sound or judicial; and that is a most unfair position in which to place the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States, because they have repeatedly protested that the denial of certiorari does not imply approval of the judgment sought to be reviewed or of its supporting Opinion. Nonetheless, just as often, members of the Bench and Bar (as well as the public) have taken such denials to imply approval of illegal, unconstitutional judgments and also not only their supporting Opinions but the "right" of District Court Judges not to accompany their judgments with supporting Opinions; doubtless much to the chagrin of this Court. That predicament should leave this Honorable Court no alternative but to resolve all popularly misconceived doubts

about its exercise of sound judicial discretion through the rehearing herein sought.

7. It is a matter of record herein that the respondents have made a sham of the Canons of Professional Ethics and the Canons of Judicial Ethics of the respondent, American Bar Association, which Canons have been adopted by the United States Courts. It is respectfully submitted that the Bench and Bar, as well as the public, have the facts on this point, not mere implications. It would necessarily follow that this Honorable Court should exercise its power of supervision herein, Paragraph 1(b) of Rule 19, because the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and so far sanctioned such a departure by the District Court as to call for an exercise of this Court's power of supervision. One good result flowing from such exercise would be a restoration of much of the lost confidence in the legal profession, as well as a retarding if not a stoppage of the "breakdown in the administration of justice" of which Mr. Justice Clark openly expressed his concern to the respondent, American Bar Association.

CONCLUSION

The record before this Honorable Court fully supports the averments of this Petition for Rehearing. The record makes it plain that this cause is one of importance not only to your petitioner, but also to the public. The arguments hereinabove make it manifest that in addition to this cause being of importance to the public and to your petitioner, it is of utmost importance to this Honorable Court and to the lower Courts of the United States. This petition, therefore, should be granted not only in the public interest and in the interest of justice, but also in the interest of honor in the Federal System.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner
Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

Dated: 30 December, 1960.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to grounds specified in paragraph 2 of Rule 58.

PAUL GINSBURG
Counsel for Petitioner
